

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

ORIGINAL

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7643

DOCKET FILE COPY ORIGINAL

HARISHA J. BASTIAMPILLAI
ATTORNEY
DIRECT DIAL (202) 424-7869
HJBASTIAMPILLAI@SWIDLAW.COM

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

February 6, 2001

RECEIVED

FEB 6 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
CY-B402
Washington, D.C. 20554

Re: Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts, CC Docket No. 01-9

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's January 16, 2001 Public Notice Requesting Comments are an original, one paper copy, and a diskette copy of the Comments of Winstar Communications, Inc.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,



Harisha J. Bastiampillai

Enclosures

Copies rec'd 07/1
BCDE

RECEIVED

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEB 6 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

| | | |
|--|---|--------------------|
| In the Matter of |) | |
| |) | |
| Application by Verizon New England, Inc. |) | |
| Bell Atlantic Communications, Inc. |) | |
| (d/b/a Verizon Long Distance), |) | CC Docket No. 01-9 |
| NYNEX Long Distance Company |) | |
| (d/b/a Verizon Enterprise Solutions) |) | |
| and Verizon Global Networks, Inc., for |) | |
| Authorization to Provide In-Region, |) | |
| InterLATA Services in Massachusetts |) | |

**COMMENTS OF
WINSTAR COMMUNICATIONS, INC.**

Russell C. Merbeth
Lawrence A. Walke
Winstar Communications, Inc.
1615 L Street, N.W.
Suite 1260
Washington, D.C. 20036
(202) 367-7600 (Telephone)
(202) 659-1931 (Facsimile)

Russell M. Blau
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

February 6, 2001

SUMMARY

It appears that the withdrawal and refiling of a Section 271 application allows a regional Bell Operating Company (“RBOC”) magically to eliminate Section 271 competitive checklist items. At least that appears to be Verizon’s view of the process as its Supplemental Filing. Verizon claims that it has satisfied “13 and one-half points” of the checklist and then concentrates solely on its Digital Subscriber Line (“DSL”) provisioning with a short section on UNE pricing. The withdrawal of its Initial Application, however, does not erase its problematic provisioning of interconnection trunking. Verizon has still failed to demonstrate that it complies with Item 1 of the Competitive Checklist in regard to interconnection trunking. In fact, Verizon’s performance in regard to interconnection trunking continues to reflect the same deficiencies Winstar documented in regard to Verizon’s initial application.

The Commission should be wary of endorsing Verizon’s attempted circumvention of the checklist. Verizon is taking the calculated gamble that its application will stand or fall on the basis of its DSL provisioning. To that end, Verizon has invested substantial time and resources into making its case for DSL provisioning. Meanwhile, CLECs are forced to endure long waits for their interconnection trunks when facilities are unavailable.

This is the problem that arises when an RBOC’s application is narrowed to certain “hot button” issues. In this case, Verizon has focused its efforts on DSL loop provisioning in the hope that satisfaction of this one issue will allow it to garner a Section 271 grant. Meanwhile, its performance in other areas continues to suffer, but Verizon hopes that those issues will be ignored. The issue of interconnection trunking is a vital one to the development of competition as it is central to the connection of the facilities-based networks of two local exchange carriers. Verizon is required to demonstrate that it has opened the Massachusetts market to facilities-

based competition, but Winstar's experiences in regard to interconnection trunking prove that Verizon has failed in this regard.

Winstar's Comments in this proceeding demonstrate that the problems it chronicled in the first proceeding on Verizon's application still remain. Winstar will demonstrate how Verizon fails to provide firm order commitments on time, and how it is late in delivering interconnection trunks. Winstar will also show how it has endured many outages on its trunks, and that Verizon has not addressed these outages in a timely and non-discriminatory manner. Winstar will also note, that while Verizon has made representations to this Commission and the Massachusetts Department of Telecommunications and Energy that it has fully resolved these problems, the reality is that the problems have not improved. Winstar will show how Verizon fails to provide two-way trunking arrangements and clear channel trunks thereby driving up Winstar's costs and limiting the amount of services it can provide. Winstar urges this Commission to ensure that Verizon meets its burden in demonstrating that it has satisfied each checklist item.

Finally, Winstar will turn its attention to the "hot button" issue of DSL service and show how Verizon's provisioning in that area utilizes the same "gaming" of performance metrics that Verizon's utilizes to mask its deficient interconnection trunking provisioning and that these problems, and the flawed excuses Verizon provides, suggests a much deeper problem in Verizon's provisioning that needs to be addressed and rectified prior to any grant of Section 271 authority in Massachusetts.

TABLE OF CONTENTS

| | |
|---|----|
| SUMMARY | i |
| I. VERIZON-MA'S POOR RECORD IN REGARD TO INTERCONNECTION TRUNKING..... | 1 |
| A. Outages/Repair..... | 2 |
| B. Provisioning..... | 5 |
| 1. Verizon Is Late In Delivering Firm Order Commitments | 5 |
| 2. Verizon Is Late In Delivering Trunks | 8 |
| 3. Verizon Fails To Provide Two-Way Trunking Arrangements | 9 |
| C. Clear Channel Trunks | 11 |
| D. Miscellaneous Trunking Issues..... | 11 |
| E. The Interconnection Trunking Problems Are Endemic | 12 |
| II. VERIZON'S PROVISIONING PROBLEMS ARE NOT LIMITED TO INTERCONNECTION TRUNKING | 13 |
| III. CONCLUSION..... | 17 |
| EXHIBIT A Trunk Provisioning Data | |
| EXHIBIT B Average Provisioning Intervals | |

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|--|---|--------------------|
| In the Matter of |) | |
| |) | |
| Application by Verizon New England, Inc. |) | |
| Bell Atlantic Communications, Inc. |) | |
| (d/b/a Verizon Long Distance), |) | CC Docket No. 01-9 |
| NYNEX Long Distance Company |) | |
| (d/b/a Verizon Enterprise Solutions) |) | |
| and Verizon Global Networks, Inc., for |) | |
| Authorization to Provide In-Region, |) | |
| InterLATA Services in Massachusetts |) | |

**COMMENTS OF
WINSTAR COMMUNICATIONS, INC.**

Winstar Communications, Inc. ("Winstar") by undersigned counsel and pursuant to the Public Notice issued January 16, 2000, submits these comments concerning the above-captioned application of Verizon New England, Inc, Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc. ("*Verizon Application*") filed on January 16, 2001. For the reasons stated below, the Commission should deny Verizon's application to provide interLATA services in the Commonwealth of Massachusetts. Winstar asks that this Commission incorporate into the record of this proceeding all the filings it made in CC Docket 00-176.

I. VERIZON-MA'S POOR RECORD IN REGARD TO INTERCONNECTION TRUNKING

Verizon argues that the record amassed on Verizon's initial application "makes clear that there is no serious dispute that Verizon satisfied 13 and one-half points of the 14-point checklist."¹ Clearly the period since Verizon's withdrawal of its initial application has led it to

¹ *Verizon Application* at p. 4.

forget its many areas of checklist non-compliance. Verizon's failure to comply with the checklist starts with Checklist Item 1.² To satisfy its obligations under Checklist Item 1 – Interconnection – a RBOC must provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of sections 251(c)(2).³ In reviewing the quality of a BOC's interconnection trunking, the Commission will look at trunk group blockage and transmission standards as indicators of a BOC's technical criteria and service standards.⁴ The BOC is also required to provide interconnection to a competitor "in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations."⁵ Among factors the Commission considers in this area are the BOC's provisioning time for two-way trunking arrangements and repair times for troubles affecting interconnection.⁶

In all these areas, Verizon MA's performance has been seriously deficient and significantly undermines the ability of CLECs to compete. In the sections below, Winstar will briefly recount the areas of deficiency in Verizon's performance and highlight areas of continued problems.

² Verizon's new filing adopts *in toto* its original application, thus the Commission will review this application based on the existing record in CC Docket 00-176 and new information provided in Verizon's supplemental filing. *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶ 1, n. 4 (June 30, 2000) ("SBCTX Order")

³ *SBCTX Order* at ¶ 65. Verizon "retains at all times the ultimate burden of proof that its application satisfies all of the requirements of Section 271." *Id.* at ¶ 47.

⁴ *Id.* at ¶ 62.

⁵ *Id.* at ¶ 63.

⁶ *Id.*

A. Outages/Repair

Winstar has experienced numerous major outages of significant duration on the trunks it obtains from Verizon.⁷ Winstar provided a list of the outages in the Massachusetts Department of Telecommunications and Energy (“MA DTE”) proceeding evaluating Verizon’s application.⁸ An outage that was particularly problematic was one in September 1999 for which Verizon admitted it was at fault.⁹ Instead of taking prompt remedial action on the outage that could have mitigated the damage, Verizon allowed the outage to continue while it tried to fix the problem with its new switch.

Despite Verizon’s representations, the September 1999 outage referenced by Winstar in its Comments was by no means a one-time occurrence.¹⁰ Winstar has experienced other outages in Massachusetts. On August 8, 2000 through August 10, 2000, Verizon caused an outage in the Boston area by performing a modification on its switch that resulted in a drop of Winstar’s Carrier Identification Code. As a result, calls from Winstar customers were not routed to the correct switch and were not completed.¹¹

⁷ MA D.T.E. Docket No. 99-271, Comments of Winstar Communications, Inc. Regarding Bell Atlantic’s Supplemental Comments at p. 3 (July 18, 2000)(“*Winstar MADTE Comments*”).

⁸ See Attachment to Volume 38, Tab 464 of Appendix B to Verizon’s Initial Application.

⁹ CC Docket No. 00-176, Comments of Winstar Communications, Inc. at pp. 2-3 (Oct. 16, 2000)(“*Winstar FCC Comments*”); CC Docket No. 00-176, Reply Comments of Verizon at p. 28 (Nov. 3, 2000)(“*Verizon Reply Comments*”).

¹⁰ Verizon argued that the September 1999 outage was a “one-time problem” and that “VZ-MA addressed the problem.” *Verizon Reply Comments* at p. 29.

¹¹ CC Docket No. 00-176, Winstar Letter to Magalie Roman Salas re Notice of *Ex Parte* Meeting at p. 2 (November 8, 2000)(“*Winstar Ex Parte Letter*”).

Verizon caused another outage to occur on June 28, 2000 by mistakenly cutting a fiber.

Verizon's action interrupted service for many of its wholesale customers up and down the Northeast corridor. Winstar states that although it recognizes that outages sometimes do occur, what Winstar finds particularly problematic is Verizon's typically poor response to the outages and other network problems. Specifically, Verizon fails to provide Winstar with timely and accurate information, which in turn impedes Winstar's ability to inform its customers on the cause of service interruptions and on the progress of resolving the problem. By way of example, Winstar escalated this particular problem to a Verizon official on the Vice President level, who was unaware of the outage and stated that it was not his responsibility as he has other people handling these matters.¹²

Winstar has proposed that Verizon specify a senior level contact and a standardized method for reconciling trouble tickets. While Verizon supposedly has promised to undertake this approach, Winstar has seen no follow-up or improvement on an operational level. In its Reply Comments, Verizon refers to a "Service Action Improvement Plan" designed to improve its relations with Winstar. Verizon states that it implemented this plan in September 1999. To date, Winstar personnel have seen little improvement in Verizon's provisioning, response to troubles, or general communication or cooperation under this particular plan.¹³ In fact, Winstar's operational personnel had never heard of this "plan" until Winstar's in-house counsel brought it to their attention. The MA DTE mistakenly relied on Verizon's purported implementation of

¹² *Id.*

¹³ *Id.*

this plan as the basis of its conclusion that Verizon was “fully responsive” to Winstar’s complaints and had resolved all issues Winstar had with Verizon.¹⁴

In addition, on October 6, 2000, during a high level meeting with Verizon executives, Winstar proposed that Verizon specify a senior level contact and a standardized method for reconciling trouble tickets, and to establish this procedure under the heading of a “Get Well Plan.” While Verizon promised to undertake development of this plan, Winstar has seen little follow-up or improvement on an operational level since the October 6, 2000 meeting.¹⁵

B. Provisioning

The Commission in evaluating trunk provisioning timeliness has primarily focused on missed due dates and average installation intervals.¹⁶ Winstar has demonstrated how Verizon also fails to timely provision trunks.¹⁷ Winstar has experienced delays in all stages of the provisioning process from Verizon’s delivery of firm order commitments (“FOCs”) to actual delivery of the trunks.

¹⁴ CC Docket No. 00-176, Evaluation of the Massachusetts Department of Telecommunications and Energy at p. 43 (October 16, 2000)(“*MA DTE Evaluation*”); Reply Comments of the Massachusetts Department of Telecommunications and Energy at pp. 3-4 (November 3, 2000)(“*MA DTE Reply Comments*”).

¹⁵ *Id.*

¹⁶ *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, ¶ 226 (January 22, 2001)(“*SBC KS/OK Order*”).

¹⁷ *Winstar Comments* at pp. 4-5; *Winstar Reply Comments* at pp. 4-11.

1. *Verizon Is Late In Delivering Firm Order Commitments*

In the initial proceeding, Winstar demonstrated how out of 10 trunk orders in Massachusetts, Verizon was late in returning the FOC on four of the orders.¹⁸ Verizon disputes Winstar's claims that Verizon failed to return timely FOCs with respect to two particular orders, claiming that Winstar cancelled and withdrew these orders.¹⁹ What Verizon fails to mention is that, after 30 days, Verizon's systems automatically cancels provisioning orders that Verizon cannot provision. Thus, Winstar had no alternative to canceling these orders, as it had to turn its attention and resources to identifying other alternatives for handling the traffic. The order nevertheless is unfulfilled. Winstar also noted that if it did not cancel the order, Verizon would also treat those orders as "customer not ready."²⁰ Other CLECs have also been experiencing similar missed due dates for the completion of trunking orders.²¹

Verizon also argues that the 10 day standard for returning FOCs only applies to Category One Orders which deal with forecasted trunk augments.²² For all other categories, Verizon claims that the FOC "is part of a negotiated process associated with the overall completion date of the trunk order."²³ Winstar noted, however, that when Verizon finally does issue a FOC accepting the order and promising to fulfill the order, the FOC often provides very little, or no, notice of when Verizon actually will provision the ordered item. As a result, Winstar frequently

¹⁸ MA D.T.E. Docket No. 99-271, Winstar Communications, Inc. Responses to Questions of the Massachusetts Department of Telecommunications and Energy, Response to Request No. 1 (August 7, 2000).

¹⁹ *Verizon Reply Comments* at p. 28.

²⁰ *Winstar Ex Parte Letter* at p. 3.

²¹ *Winstar FCC Comments* at p. 4.

²² MA D.T.E. Docket No. 99-271, Verizon Massachusetts Supplemental Checklist Affidavit (August, 2000)("Verizon Supplemental Checklist Affidavit"). See Attachment to Volume 42, Tab 494, ¶ 34, of Appendix B to Verizon's Application.

²³ *Id.*

is unable to prepare for the “now or never” appointment with Verizon technician. Accordingly, Verizon will characterize these orders as situations of “customer not ready,” and exclude the orders from the relevant performance metrics.²⁴

Even when Verizon provides sufficient notice such that Winstar is able to make the appointment, the Verizon technician will meet them and either tell them that the facilities are not available, or only deliver part of the order. Verizon will count this as a FOC that was met, despite its failure to provide the full order. For the remaining part of the order, Verizon will not issue a new FOC, but will instead place the order on “backorder,” thus excluding the order from the relevant FOC metric. Meanwhile, the CLEC is unable to bill its customer until the full order is completed.²⁵ Verizon also will require a CLEC to accede to a changed due date on orders where it has already missed the due date or is about to miss the due date. If the CLEC does not accede, the order is also “backlogged” leading to further delays in provisioning.²⁶ In most of these cases, Verizon lacks the facilities to complete the order, so it holds the order.²⁷ These situations exemplify the manner in which Verizon’s performance statistics are skewed or gamed. While Winstar cannot know the true cause of Verizon’s delays, it is quite possible that it is by design or due to insufficient resources devoted to servicing the needs of its wholesale customers.²⁸

Verizon also attempts to excuse its delay in provisioning by arguing that CLECs frequently make significant changes to their trunk orders after they are submitted to Verizon

²⁴ Verizon utilizes the “customer not ready” designation on nearly 60% of all interconnection trunking orders from March 2000 to July 2000. MA D.T.E. Docket No. 99-271, Verizon Massachusetts Supplemental Checklist Affidavit (August, 2000)(“*Verizon Supplemental Checklist Affidavit*”). See Attachment to Volume 42, Tab 494 of Appendix B to Verizon’s Application.

²⁵ Winstar can only begin billing on the order when the order is designated “ready for business.”

²⁶ *Id.* at p. 5.

²⁷ *Id.*

²⁸ *Winstar Ex Parte Letter* at p. 3.

MA. It claims that from March 2000 to June 2000, the average date for a CLEC to submit a complete and final CLEC trunking order ranged from 3.5 days to 58.3 days after it was submitted.²⁹ The reasons for these changes are rooted in Verizon's ordering systems. Winstar noted how typically, Winstar will submit an order and wait for days or perhaps weeks for a response. Winstar will be forced to escalate its inquiry into the status of its order, only to be informed that the order must be resubmitted again to correct minor flaws in the order. Verizon's system is particularly frustrating because if an order includes five alleged errors, it must be resubmitted five times before each error is captured by Verizon's system. Winstar has also been experiencing particular problems with Verizon's Open Query List in regard to pending orders. The List will state the order is in query when it is not. Thus, Winstar is unable to track properly many of its pending orders. In addition, when Winstar attempts to escalate its inquiry on a certain order, it finds that the particular individual to contact keeps changing, and the website information as to whom to contact is frequently incorrect.³⁰ Thus, when Winstar calls a Verizon representative it is frequently sent on a wild goose chase to track down the correct party to address the issue.

Once Winstar clears this resubmission hurdle, Verizon finally will issue a FOC accepting the order and promising to fulfill the order.³¹ A CLEC, however, is required to jump through numerous unnecessary loops and endure significant delays to reach this stage. It is no wonder then that many CLECs are experiencing delays in regard to provisioning of trunks. Verizon attempts to use flawed excuses to overstate its performance when clearly the reasons why it is not installing interconnection trunks on a timely basis are rooted in its own systems and practices.

²⁹ *Verizon Supplemental Checklist Affidavit* at ¶ 21.

³⁰ Verizon provides a CLEC handbook on its website that is purported to provide up-to-date information that a CLEC needs to interact with Verizon.

³¹ *Winstar Ex Parte Letter* at p. 3.

2. Verizon Is Late In Delivering Trunks

Verizon claims that even if the FOC may be late, Verizon still delivers the trunks in a timely manner. This has not been Winstar's experience, however. Winstar computed the average amount of days it took for Verizon to provision trunks from the date of the submission of the access service request ("ASR") to the date the order was "ready for service" ("RFS"). In Massachusetts, the average period was 97.2 days with some orders taking 510 days.³² Winstar did a comparative analysis of the intervals for other ILECs in regard to provisioning trunks to Winstar and Verizon's performance in Massachusetts was by far the worst.³³

As a result of Verizon's untimely provisioning, Winstar customers are in danger of being unable to reach the person they are calling due to calls being blocked because of the inadequate trunking capacity.³⁴ Verizon's failure to timely provide trunking in regard to its customer's traffic also ensures that its customers who are attempting to call Winstar customers will not be able to complete the calls. Winstar stated it has not yet experienced direct blockage on its trunks in Massachusetts, but that several trunks are close to blockage.

Winstar has attempted to augment its trunk capacity, but Verizon repeatedly has informed Winstar that no switch ports are available. As a result, Winstar has been forced to downsize some trunk groups and reconfigure others. This lack of available facilities has not only strained Winstar's current requirements, but also impeded its plans to migrate its traffic.³⁵

3. Verizon Fails to Provide Two-Way Trunking Arrangements

The Commission has stated that one indication of whether a RBOC is providing nondiscriminatory interconnection trunking is its provisioning of two-way trunking

³² Exhibit A, Trunk Provisioning Data. The chart shows the order history for recent Winstar orders.

³³ Exhibit B, Average Number of Days from ASR to RFS for RBOCs. The chart shows the average interval for network provisioning order completion.

³⁴ *Winstar FCC Comments* at p. 5.

³⁵ *Winstar Ex Parte Letter* at p. 2.

arrangements.³⁶ The Commission's rules require that an ILEC provide a two-way trunking arrangement upon request, wherever two-way trunking arrangements are technically feasible.³⁷ In Massachusetts, Verizon has been denying Winstar's efforts to convert its one-way inbound and outbound trunks in Winstar's tandem groups to two-way trunk groups. In Massachusetts, Winstar's tandem groups to Verizon are split with a one-way trunk incoming and a one-way trunk outgoing. This double trunking causes twice the work to provision because two groups are involved instead of one. Two-way trunks are also more efficient in that they require fewer ports on the switch to provide equivalent amounts of traffic. Thus, two-way trunking enables Winstar to save money and facilitates Winstar's entry into more markets. Conversely, the increased costs resulting from the need to use more ports in a one-way trunking arrangement creates higher costs for the CLEC seeking to interconnect and, thus, creates a barrier to entry.

Verizon claims that its Interconnection Agreement ("ICA") with Winstar precludes use of two-way trunk groups. There is nothing in the ICA that precludes the use of two-way trunks, and Section 5.3.1 of the ICA states that "the parties shall each initially configure a separate 2-way group as a direct transmission path between each Winstar Primary switch and each NYNEX primary switch." Verizon's main objections to use of two-way trunking arrangements is that 1) it makes it more difficult for Verizon to monitor traffic as it hard to determine which way the traffic is being directed, and 2) the purported limitation of its switches at the tandem office or end office to facilitate two way trunking. These objections are without merit, however. In regard to monitoring traffic, there are ways that Verizon can monitor the traffic such as SS7 signaling. In regard to its switches, most of the switches Verizon uses have the capability of providing two-way trunking, Verizon just needs to purchase two-way trunk port cards. Verizon does not want to do this because it would prefer to use its existing inventory of one-way port cards.

³⁶ *SBC KS/OK Order* at ¶ 226, n. 661.

³⁷ *Id. citing* 47 C.F.R. § 51.035(f).

The transparent nature of Verizon's objections is reflected in the fact that Verizon has recently informed Winstar that it will accelerate its provisioning of future two-way trunking arrangements. Winstar suspects that this concession is fueled by the pendency of this application, and given prior Verizon intransigence on this issue, asks this Commission to require Verizon to affirm that it will provide such two-way trunking as a condition of granting this application. Verizon's failure to provide such arrangements to this point clearly reflects its non-compliance with its checklist obligations.

Such a position also undercuts Verizon's claims that it has capacity issues at certain switches because it refuses to utilize more efficient two-way trunking arrangements that would open up more ports at these switches, and therefore create more capacity.

C. Clear Channel Trunks

Winstar also observed how Verizon fails to provide to CLECs 64 Kbps Clear Channel ("64cc") interconnection trunks in its Cambridge switch.³⁸ Winstar is still experiencing problems on this matter as Winstar wanted to establish a new trunk group at this location and requested a trunk group size of 192 DS0s that can be 64cc capable. Verizon is limiting Winstar to 24 DS0s that can be 64cc capable, and requiring Winstar to get another trunk group for the remaining 168 DS0s which will not be 64cc capable as Winstar had desired. Verizon's ability to use such trunks while denying CLEC's the same quality of interconnection give it a clear advantage in the type and level of service it offers its customers. For instance, without these trunks, CLECs cannot offer ISDN capability.³⁹ The Clear Channel signaling format makes available an additional 8 Kbps of bandwidth for ISDN transmission.⁴⁰

³⁸ *Winstar FCC Comments* at p. 6.

³⁹ *Winstar FCC Comments* at pp. 6-7.

⁴⁰ MA DTE Docket No. 99-271, Supplemental Comments of Bell Atlantic-Massachusetts at p. 8 (May 26, 2000).

D. Miscellaneous Trunking Issues

Winstar has also encountered tremendous delays in the provisioning of trunks to its hubs in vital markets. Winstar placed orders for trunks for these hubs and were told months later that Winstar needed to provide forecasts and entrance facilities for these hubs. Verizon improperly designated these hubs as “points of presence” (“POPs”), and stated that Winstar needed to provide entrance facilities. Subsequently recognizing that some locations may have been improperly designated as a POP, Verizon still stated that there were issues of facilities not being available at this location, and the potential for required construction time.⁴¹

The MA DTE argued that this issue should have been raised in the MA DTE proceeding, and thus should be accorded little weight.⁴² The problem with the entrance facilities, however, was ongoing at the time of the close of the MA proceeding, and Winstar was still attempting to resolve the problem with Verizon. The U.S. Department of Justice noted in regard to a similar challenge raised by the MA DTE to other CLEC arguments:

Furthermore, the Department is uncertain how much weight the MA DTE gave its finding that CLECs were accepting non-working loops when it appears that the remaining opportunity for comment may have been limited to oral argument, and that CLECs have disputed Verizon’s assertion in their initial comments to this Commission.⁴³

At any rate, the withdrawal and Verizon’s resubmission of its application allows Verizon the further opportunity to address this issue. Clearly the MA DTE mistakenly thought that any problems with regard to Verizon’s provisioning of interconnection trunks were resolved by the close of its proceeding, and Verizon did a lot to further this mistaken impression. The record of this proceeding and Docket No. 00-176 demonstrate, however, that Verizon’s problems continue.

⁴¹ *Winstar FCC Comments* at p. 6.

⁴² *MA DTE Reply Comments* at pp. 5-6.

⁴³ CC Docket No. 00-176, U.S. Department of Justice Evaluation at p. 8. (October 27, 2000)(“*DoJ Evaluation*”).

E. The Interconnection Trunking Problems Are Endemic

The experience of other CLECs recorded in this proceeding and the MA DTE proceeding only heightens Winstar's concerns. Winstar was not the only carrier to experience serious problems in regard to interconnection trunking. In its Comments and Reply Comments, Winstar summarized the problems of other CLECs in regard to interconnection trunking raised in the MA DTE proceeding and the FCC proceeding.⁴⁴ RNK Telecom references "several lengthy and significant provisioning problems" with Verizon, the most recent ones involving the installation of entrance facilities for a RNK switch.⁴⁵ RNK also states it has encountered inward trunk blockage.⁴⁶ NECLEC states it has experienced delays in the provisioning of entrance facilities and trunks at its facility in Hingham, Massachusetts.⁴⁷ ICG notes how it has been attempting to enter the Massachusetts local exchange market for nearly a year, but its efforts have been impeded solely due to "Verizon's delays in provisioning the interconnection trunks that ICG needs to enter the market."⁴⁸ Verizon's problems with interconnection trunking were not limited to a couple of carriers as Verizon suggests.⁴⁹

⁴⁴ *Winstar FCC Comments* at pp. 1-7; CC Docket No. 00-176, Reply Comments of Winstar Communications, Inc., at pp. 8-10 (November 3, 2000)(*"Winstar Reply Comments"*).

⁴⁵ CC Docket No. 00-176, Comments of RNK Inc., d/b/a RNK Telecom at p. 2 (October 12, 2000)(*"RNK Comments"*).

⁴⁶ *Id.*

⁴⁷ CC Docket No. 00-176, Comments of NECLEC, LLC at p. 2 (October 12, 2000)(*"NECLEC Comments"*).

⁴⁸ CC Docket No. 00-176, Comments of the Competitive Telecommunications Association at p. 17 (October 12, 2000)(*"CompTel Comments"*).

⁴⁹ *Verizon Reply Comments* at pp. 27.

II. VERIZON'S PROVISIONING PROBLEMS ARE NOT LIMITED TO INTERCONNECTION TRUNKING

Verizon, of course, hopes the Commission will forget all of Verizon's problems with the other items of the checklist by self-declaring it has met "thirteen and one half" items of the checklist and focusing its Supplemental Application on the remaining one-half, its DSL provisioning. Winstar has demonstrated above, that at least as far as interconnection trunking is concerned, Verizon had not satisfied this checklist item. Review of Verizon's DSL provisioning reveals some very illuminative parallels between Verizon's provisioning of DSL loops and its provisioning of interconnection trunking.

DSL providers seem to be experiencing the exact same problem in regard to installation timeliness that Winstar has chronicled. Winstar noted how it is having significant problems with getting trunks on time, and how Verizon would circumvent provisioning intervals by using a "facilities not available" excuse. Covad noted that it was having similar problems with DSL provisioning. As Covad observed:

Verizon had never provided Covad, despite repeated requests, with information on whether Verizon exercises nondiscriminatory facilities assignment policies. As a result, Covad faces "no facilities" issues approximately 55 times more often than Verizon does for its own retail customers. Yet facilities are excluded from the on-time performance metrics. The Commission does cannot simply throw up its hands at these important issues – if the Commission does not require Verizon to fix the no access and facilities issues, rather than continue to exclude them from the metrics and pretend there is no problem, then the future of competition for DSL is in doubt.⁵⁰

⁵⁰ CC Docket 00-176, Reply Comments of Covad Communications Company at p. 3 (Nov. 3, 2000)(*"Covad Reply Comments"*).

Verizon attempts to make these problems disappear by eliminating these orders from the relevant performance metrics. As Covad goes on to observe:

We also know that Verizon excludes from that measure [metric for installation timeliness] a variety of orders that it feels were late due to circumstances that were not its fault, such as facilities and no access issues – which Verizon classifies as “customer reasons.” Thus, Verizon has the ability to scrub its performance data to exclude all of the missed installation orders that it feels are not its fault.”⁵¹

Verizon does not deny it excludes orders missed for facilities reasons from the on-time measurements included in the Performance Assurance Plan, but claims it has authority to do so from the Massachusetts and New York Commissions.⁵² This “authority” turns out to be simply the New York commission approving a “consensus” of the Carrier-to-Carrier working group to exclude orders missed due to facility delays from the same measures in the Carrier-to-Carrier performance reports.⁵³ It is not clear what fueled this consensus, particularly since many of the larger DSL providers were complaining of the excluding of these orders as late as last November. For instance, Rhythms also noted the absurdity Verizon’s continuing use of “excuses” to exclude orders from performance metrics. As Rhythms argued:

[a]s Verizon correctly points out, these metrics exclude orders missed for lack of facilities. In fact, these metrics are measuring completions by the due date, so they do not account for situations where the due date is changed for some reason. As a result, just looking at this exclusion is like an airline reporting its on-time performance but excluding all times when weather or equipment problems delay the flight.⁵⁴

⁵¹ *Covad Reply Comments* at p. 8.

⁵² *Verizon Application* at p. 16.

⁵³ *Verizon Application*, Joint Supplemental Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at ¶¶ 65-66 (Jan. 16, 2001)(“*Lacouture/Ruesterholz Declaration*”).

⁵⁴ CC Docket No. 00-176, Reply Comments of Rhythms Net Connections, Inc. at p. 10 (Nov. 3, 2000)(“*Rhythms Reply Comments*”).

Winstar's concern here is not with the particular definition of the DSL installation timeliness performance metrics, although it seems dubious that "no facilities" orders are being excluded from metrics and due dates are changed at Verizon's whim.⁵⁵ Winstar is concerned about the parallels between the DSL providers situation and Winstar's own situation where Verizon is attempting to explain away late orders, and exclude them from performance metrics, based on "no facilities available" excuses. The experience Winstar related above, coupled with the DSL providers' experience, suggests this is an endemic problem in Verizon's provisioning and that Verizon is using this excuse to mask its provisioning problems.

Verizon's practice in regard to FOCs for DSL loops bears this out. For instance, Verizon represented to this Commission that it "confirmed the CLEC's requested due date or the correct interval for 97.7% of the LSRs."⁵⁶ As Covad notes, this clever phraseology attempts to give a picture on on-time loop performance, but the figure does not measure on-time loop performance rather it measures Verizon's FOC performance. The FOC is Verizon's commitment to install a loop on a particular date. It is not the actual installation date, nor does it indicate that Verizon actually installed the loop on the day it said it would. As Covad went on to observe:

So what does it mean that Verizon states that it "confirmed the CLEC's requested due date or the correct interval for 97.7% of the LSRs." It means that Verizon told the competitive LEC that it would provide the loop on the date that the competitive LEC wanted it, or on the date Verizon was required to provide it, 97.7% of the time. Does it mean Verizon *actually delivered* the loop when it said it would? Of course not. All it means is that Verizon promised the requesting LEC that Verizon would deliver a loop on a particular day. Does Verizon actually deliver the loops when it is supposed to? Verizon's own metrics show that it most certainly does not. In addition, as detailed in Covad's confidential attachment G, the reports that Verizon provides Covad in Massachusetts for its

⁵⁵ Adoption by a state of a particular performance standard is not determinative of what is necessary to establish compliance under Section 271. *SBCTX Order* at ¶ 55.

⁵⁶ *Covad Reply Comments* at p. 13. Verizon similarly claims it is meeting over 99% of the due dates for CLEC interconnection trunks. *Verizon Supplemental Checklist Affidavit* at ¶ 21.

on-time loop performance demonstrate equally conclusively that Verizon rarely meets its committed loop delivery date.⁵⁷

This mirrors Winstar's experience in regard with interconnection trunks detailed above. Verizon would provide Winstar a FOC for the trunks, but when the date came for Winstar to accept delivery it would not get the trunks or only get a partial delivery. Verizon would, however, note this is order as a FOC that was met.

These problems, however, are not simply indicative of metrics that need to be fixed or redefined. They are indicative of more prevalent problems with Verizon's provisioning and procedures.⁵⁸ Verizon keeps relying on the same excuses to defend its faulty provisioning and adeptly manages to use these excuses to distort its performance under the performance metrics. The Commission needs to go beyond the metrics and carefully examine Verizon's performance, particularly in regard to installation timeliness. The Commission needs to determine if the "no facilities" excuses are valid, or simply a mask for discriminatory and deficient provisioning.

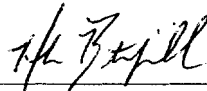
⁵⁷ *Covad Reply Comments* at p. 13 (emphasis in original).

⁵⁸ *See, Covad Reply Comments* at p. 18.

III. **CONCLUSION**

For the foregoing reasons, the Commission should deny Verizon's application for Section 271 authority in Massachusetts.

Respectfully submitted,



Russell C. Merbeth
Lawrence A. Walke
Winstar Communications, Inc.
1615 L Street, N.W.
Suite 1260
Washington, D.C. 20036
Telephone: (202) 367-7600
Facsimile: (202) 659-1931

Russell M. Blau
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Telephone: (202) 424-7500
Facsimile: (202) 424-7545

Counsel for Winstar Communications, Inc.

February 6, 2001

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|--|---|--------------------|
| In the Matter of |) | |
| |) | |
| Application by Verizon New England, Inc. |) | |
| Bell Atlantic Communications, Inc. |) | |
| (d/b/a Verizon Long Distance), |) | CC Docket No. 01-9 |
| NYNEX Long Distance Company |) | |
| (d/b/a Verizon Enterprise Solutions) |) | |
| and Verizon Global Networks, Inc., for |) | |
| Authorization to Provide In-Region, |) | |
| InterLATA Services in Massachusetts |) | |

**EXHIBIT A TO
COMMENTS OF WINSTAR COMMUNICATIONS, INC.**

Massachusetts Vendor Comparison 2000

[illegible]

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|--|---|--------------------|
| In the Matter of |) | |
| |) | |
| Application by Verizon New England, Inc. |) | |
| Bell Atlantic Communications, Inc. |) | |
| (d/b/a Verizon Long Distance), |) | CC Docket No. 01-9 |
| NYNEX Long Distance Company |) | |
| (d/b/a Verizon Enterprise Solutions) |) | |
| and Verizon Global Networks, Inc., for |) | |
| Authorization to Provide In-Region, |) | |
| InterLATA Services in Massachusetts |) | |

**EXHIBIT B TO
COMMENTS OF WINSTAR COMMUNICATIONS, INC.**

Vendor Intervals 2000

| | | | |
|---------------------------------|--|--|---|
| | | | |
| | | | |
| | | | |
| RBOCs / States | | | Average Number of Days from ASR to RFS |
| Ameritech | | | 40.4 |
| Bell South | | | 43.7 |
| Verizon MA | | | 97.2 |
| Qwest/US West | | | 53.8 |
| Pac Bell | | | 51.7 |
| Verizon PA | | | 60.1 |
| Verizon (BA, GTE, NYNEX) | | | 75.3 |
| SWBT | | | 60.7 |
| SNET | | | 46.5 |

| | | | |
|------------------|--|--|--|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Data Source: OMM | | | |

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on February 6, 2001, I caused to be served upon the following individuals the Comments of Winstar Communications, Inc. in CC Docket 01-9:



Harisha Bastiampillai

Via Courier:

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
CY-B402
445 Twelfth Street, S.W.
Washington., DC 20554

Susan Pie'
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C224
445 Twelfth Street, S.W.
Washington, DC 20554

Mark L. Evans
Evan T. Leo
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036

Josh Walls
U.S. Department of Justice
Antitrust Division
Telecommunications Task Force
1401 H St. NW, Suite 8000
Washington, DC 20005

ITS, Inc.
445 12th Street, S.W., Room CY-314
Washington, DC 20554

Via Overnight Delivery:

Cathy Carpino
Massachusetts Department of
Telecommunications and Energy
One South Station
Second Floor
Boston, MA 02110

Michael E. Glover
Karen Zacharia
Leslie A. Vial
Donna M. Epps
Joseph DiBella
Verizon
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201

Bruce P. Beausejour
Donald C. Rowe
Verizon New England, Inc.
185 Franklin Street
Room 1403
Boston, MA 02110

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, N.W.
Suite 365
Washington, D.C. 20005

Via First Class Mail

*Thomas F. Reilly
Karlen Reed
George B. Dean
Attorney General, Massachusetts
200 Portland Street
4th Floor
Boston, MA 02114*

*Kimberly A. Scardino
Assistant General Counsel
Rhythms Links
1625 Massachusetts Avenue, N.W.
Suite 300
Washington, D.C. 20036*

*Mary Jean Fell
Blumenfeld & Cohen
1625 Massachusetts Avenue, N.W.
Suite 300
Washington, D.C. 20036*

*John Rubino
Peggy Rubino
Donald C. Davis
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd.
Suite 220
Tampa, FL 33602*

*Jason D. Oxman
Anthony R. Petrilla
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005*

*Lawrence Walke
Winstar Communications, Inc.
1615 L Street, N.W., Suite 1260
Washington, D.C. 20036*

*A. Renee Callahan
Willkie Farr & Gallagher
1155 21st Street, N.W., Suite 600
Washington, D.C. 20036*

*Christopher Moore, Esq.
Sprint Communications Company, L.P.
401 9th Street, N.W., Suite 400
Washington, D.C. 20004*

*David Hoyt
President, NECLEC, LLC
190 Old Derby Street
Hingham, MA 02043*

*Cameron F. Kerry
Counsel, NECLEC, LLC
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
One Financial Center
Boston, MA 02111*

*Rodney L. Joyce
Shook, Hardy, and Bacon L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004*

*Douglas Denny-Brown
General Counsel
RNK Telecom
1044 Central Street
Stoughton, MA 02072*

*Leonard Kriss
Executive Vice President
And General Counsel
OnSite Access Local, LLC
1372 Broadway, Second Floor
New York, NY 10018*

Jonathan Lee
Vice-President, Federal Regulatory Affairs
Competitive Telecommunications
Association
1900 M Street, N.W.
Washington, D.C. 20036

Richard H. Rubin
AT&T Corp.
195 North Maple Avenue
Room 1127MI
Basking Ridge, NJ 07920

Kenneth Salinger, Esq.
Jay E. Gruber, Esq.
Palmer & Dodge, LLP
One Beacon Street
Boston, Massachusetts 02108-3190

Patricia Jacobs, Ph.D.
AT&T Communications
of New England, Inc.
99 Bedford Street
Boston, MA 02111

Jonathan Askin
General Counsel
The Association for Local
Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Alan Mandl
Mandl and Mandl LLP
10 Post Office Square
Suite 630
Boston, MA 02109

Wendy Bluemling
DSLnet Communications, LLC
545 Long Wharf Drive
Fifth Floor
New Haven, CT 06511

Bruce Kushnick
New Networks Institute
826 Broadway, Suite 900
New York, NY 10003

B. Keley Kiser
Digital Broadband Communications, Inc.
200 West Street
Waltham, MA 02451

Stacey Parker
Counsel Director of Regulatory Affairs
AT&T Broadband
6 Campanelli Drive
Andover, MA 01810

William D. Durand, Esq.
Robert J. Munnely, Jr., Esq.
New England Cable Television
Association
100 Grandview Road
Suite 310
Braintree, MA 02184

Chuck Hempfling
President
C.A. Hempfling & Associates, Inc.
8 Birch Lakes Drive
Hawthorn Woods, IL 60046

Michael J. Friduss
President
M.J. Friduss & Associates
1555 Museum Drive
Highland Park, IL 60035

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- ✓ Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

One diskette.